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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

FLORA MCLEAN,)	Cause No.
)	
Plaintiff,)	<u>COMPLAINT</u>
)	
-vs-)	
)	
UNITED STATES OF AMERICA,)	
)	
Defendants.)	
_____)	

Plaintiff, through her attorney, alleges:

1. Plaintiff Flora Mclean is a citizen and resident of Browning, Glacier

County, Montana.

2. This Court has jurisdiction over this case pursuant to the Federal Tort Claims Act, 28 U.S.C. 2671, et seq., in that the claim arises from the Government's conduct in providing health care services at Blackfeet Community Hospital (BCH) in Browning, Montana. BCH is an Indian Health Services (IHS)-funded facility operated by the United States. The negligent acts and omissions that are the subject of this action were committed by the Government's agents and employees while acting within the course and scope of their employment. This Court has exclusive jurisdiction over tort claims brought against the United States pursuant to 28 U.S.C. § 1346(b).

3. The Plaintiff's claim was filed in writing with the appropriate Federal agency on January 30, 2017. The United States has not made final disposition of the claim within six months after it was filed. Accordingly, Plaintiff has appropriately exhausted her administrative remedies under 28 U.S.C. § 2675.

4. Venue is proper in this Judicial District pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claims occurred in this judicial district. Venue is proper in this Division pursuant to Local Rules 3.2(b)(1) and 1.2(c) because Glacier County is a proper venue under Montana law and Glacier County is within the Missoula Division.

5. On January 13, 2016, Flora was seen at the Browning Hospital Emergency Department. Her chief complaint was chest discomfort with heaviness, and extreme fatigue. Lab tests were obtained that showed Flora was markedly anemic. Her hemoglobin was critically low at 7.9 g/dL, and her hematocrit was also extremely low with a value of 28.8. The patient was not informed about her alarming anemia and no

further workup or treatment was ordered.

6. Flora was seen at the Browning Hospital Clinic on March 2, 2016. Labs were obtained during this visit that showed her anemia had worsened, with a hemoglobin of 6.8 and hematocrit of 25.5. Again, no treatment was administered to address her anemia.

7. On March 17, 2016, Flora was seen at Browning Hospital. She expressed concerns about her worsening symptoms of fatigue, low energy, feeling cold, etc. Flora asked to have labs drawn to try to find out what was going on with her. She asked to be called with the results. The next day Flora called several times to get the results. She finally was able to talk to a CNA who told her her hemoglobin was 6.7. She asked the CNA if that was good or bad and the CNA did not seem to know. Flora asked that a doctor call her back to let her know. Flora's husband Carl came and got her from work because she was having difficulty functioning. After they got home, Carl called the Emergency Department at Benefis Hospital in Great Falls and asked to talk to a doctor. He talked to a doctor and told the doctor that Flora's hemoglobin was 6.7. The doctor advised Carl to take her immediately to the nearest facility for treatment for critical anemia.

8. Carl took Flora to the Browning Hospital Emergency Department after the call with Benefis. The record lists the following complaints: feeling lightheaded, headache, fatigue, chest pain, SOB, dizziness, states "I feel light [sic] blacking out." Lab tests showed her anemia had worsened further with hemoglobin of 6.3 and hematocrit of 24. As should have been done long before, Flora was treated for her anemia. With lack

of monitoring and treatment, her anemia had become so critical that she required three units of blood. She was also started on iron replacement.

9. Flora responded positively to the transfusion. On March 19, 2016, her hemoglobin was at 9.6 and hematocrit at 33.4.

10. On March 22, 2016, Flora's hemoglobin was 10.6 and her hematocrit 37.3.

11. On March 31, 2016, Flora was seen by Donald Berdeaux, MD, a hematologist in Great Falls. Dr. Berdeaux diagnosed iron deficiency anemia and added vitamin C to her iron replacement. He also ordered additional testing to look for sources of internal bleeding. Further testing did not reveal a source of bleeding.

12. On April 28, 2016, Flora was seen in follow-up at the Browning Hospital Clinic. She expressed concern about her memory and that she was having a hard time with thinking things through. Her diagnosis included impaired cognition and the plan included referral for a mental status evaluation.

13. On June 14, 2016, Flora saw Dr. Berdeaux in follow-up. According to his note, Flora related the following: "She also is having difficulty with her memory ever since she presented to the emergency room with hemoglobin approximately 6 and also hypotension. Her boss has also noted that she is having difficulty with her writing skills. Her family also notes that time she talks as if she's drunk."

14. Flora was seen at Advanced Neurology Specialists in Great Falls, Montana, on October 25, 2016 for a neurologic evaluation. She related her memory problems started 6 to 7 months prior and were continuing. She explained that she was employed as an employment specialist, handling grants and making reports. She went on medical

leave due to her anemia and when she returned she was unable to make a coherent report. As a result she lost her job. Neurologic evaluation demonstrated that “Flora does have some cognitive dysfunction that spans a few different cognitive domains.” According to the report: “Given her history of onset and medical problems it is presumed that she may have developed a hypoxic encephalopathy or possibly ischemic encephalopathy.”

15. In a neurology follow-up on December 15, 2016, Flora explained that her cognitive problems continued. Specifically, according to the note:

She continues to have trouble with her memory. She tells me she had problems remembering a standard prayer that she memorized at a much younger age. Also, became disoriented while driving home after taking someone to a medical appointment in another town. She became frightened and felt lost. Her friend continued to advise her of her surrounding until she approached her town and then recognized it. This happened one other time when driving her daughter. She can complete ADLs. She may lose her place when telling a story.

16. As a result of her cognitive problems, Flora has lost her job with Blackfeet Manpower One-Stop Center where she had been employed for over 20 years. According to her federal tax records, Flora earned \$37,574 in 2015.

17. In providing medical care and services to Flora, health care providers at the Browning Hospital and Browning Hospital Clinic did not comply with the standard of care. Had the medical care providers complied with the standard of care, Flora’s anemia would more likely than not have been diagnosed and treated earlier, which would more probably than not have resulted in avoidance of her brain injury and its consequences including, without limitation, loss of employment need for further medical care and general damages.

18. The Defendant’s negligence was a substantial factor in bringing about

Flora's harms, losses and damages and deprived her of the chance for a better result.

WHEREFORE, Plaintiff seeks judgment against the Defendant as follows:

1. For a judgment in such amounts as shall be proven at trial;
2. For costs of this action;
3. For such other relief as the Court deems just.

Dated this 29th day of September, 2017

/s/ John M. Fitzpatrick
John M. Fitzpatrick
TOWE & FITZPATRICK, PLLC
Attorneys for Plaintiff